85-113

No. .....

Office-Supreme Court, U.S.
FILED
JUL 20 1985
ALEXANDER L. STEVAS,
CLERK

In The

Supreme Court of the United States

October Term 1985

CAROL LANDI,

Petitioner,

v.

NORMAN SUI, ET AL.

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In keeping with the United States' commitment under the Treaty of Guadalupe Hidalgo that the property rights of former Mexican citizens "shall be inviolably respected," Congress passed the Act of March 3, 1851 "to ascertain and settle the private Land Claims in the State of California." The validity of federal land grants to petitioner's predecessor's in interest was confirmed under the 1851 Act, and a federal patent issued without contest or reservations. The court below, however, held that these federal land patents entered into evidence by the respondents Sui were and are void, fraudulent and a cloud on respondents title together with accompanying declarations of land patent, the latter of which is a copyrighted document registered with the Copyright Office of the United States numbered TXU-81-430. In keeping with this court's decision in *Summa Corp. v. California* (1984), 104 S. Ct. 1751 and the enactment by Congress of Public Law 98-432 [S. 1735]; September 28, 1984 entitled *Shoalwater Bay Indian Tribe-Dexter-By-The-Sea Claim Settlement Act,* the petitioners have challenged the jurisdiction of the state trial court over federal land patents and U.S. Copyrighted documents that were entered into evidence by the respondents and included in the exhibits to the petition to the California supreme court. The state supreme court denied the petitioners hearing, however, the state appellate court in its opinion did identify the two factual issues of the case below in its opinion on whether the preliminary injunction should have been dissolved and whether the trial court lacked subject matter jurisdiction over the case because it involves federal land patents and

copyrights. In the latter circumstances, the questions presented are:

1. Whether, when the federal government pursuant to its treaty obligation confirmed land grants and patented the land to private parties without contest, the state by and through its courts can cancel and annul federal land patents in view of federal statutes 43 USC §§ 1165 and 1166 and *Summa*.

2. Whether, in view of the federal jurisdictional statute governing civil actions involving United States copyrights pursuant to 28 USC § 1338(a), the state court has subject matter jurisdiction to cancel federally copyrighted documents.

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OPINION BELOW

The opinion of the California appellate court was entered on January 3, 1985 and certified for publication in the California Reporter at 163 Cal. App. 3rd 383, *Sui v. Landi, et al* (January 1985). A timely petition for hearing was filed in the state supreme court, and was denied on March 20, 1985. A timely appeal was made to the California Court of Appeal on May 20, 1985 and on June 12, 1985, Mr. Justice Rehnquist extended the petitioner's time to file a petition for a writ of certiorari until July 18, 1985.

———o———

JURISDICTION

This Court's Jurisdiction is invoked under 28 USC § 1257(3).

———o———

TREATY AND STATUTES INVOLVED

Treaty of Guadalupe Hidalgo, 9 Stat. 922 (1848).

Act of March 3, 1851 "to ascertain and settle private Land Claims in the State of California," 9 Stat. 631 (1851).

43 USC §§ 1165 and 1166.

28 USC § 1338(a)

———o———

STATEMENT

This case presents fundamental issues concerning the jurisdiction of the state court over federal land patents in light of this Court's decision in *Summa*, supra and the impact of Act of Congress, Public Law 98-432, supra (hereafter "*Shoalwater Bay Indian Tribe*"), and the jurisdiction of the state courts over civil actions involving copyrighted documents registered pursuant to the federal Copyright Act of 1976, 17 USC § 101 et seq.; H.R. Rep. No. 94-1476, 94th Cong. 2d Session, 129-131 (1976) and Section 301, subdivision (a) of the act: referenced in *Klekas v. EMI Films, Inc.* (Jan. 1984) 150 CA3d 1102 at 1109(3), — Cal. Rptr. —.

The present decision below has prompted other trial courts in the State of California to order federal land patents and the accompanying copyrighted declarations to be false and fraudulent, and to be delivered up to these state courts for cancellation. Other cases involving the same issues and questions of state court jurisdiction are presently on their way to this Court from the state of California, therefore, the questions presented in this petition are of immediate and great public importance affecting the property rights of the citizens of California, which, if not reviewed at this time, will spread to sister states and affect the state constitutional property rights of all American landowners.

The present decision of the court below is being interpreted by the California trial courts as a circumvention of this Courts' decision in *Summa*, supra, to quiet title and cancel federal land patents, esp., in view of the act of Congress in *Shoalwater Bay Indian Tribe* in quieting title

where dual chains of title exist, the landowners of California have no adequate remedy to preserve their homesteads and original federal land patents. The California courts, by interpreting the decision below as stated before, are impinging upon the state constitutional right to acquire, possess and protect property of Article I, section 1 of the California Constitution, Bill of Rights. That fundamental error, together with its importance to the property rights potentially involved, merit the attention of this Court.

A. Assumed Jurisdiction of The State Court Is In Error.

The origin of the petitioner's title to the property in dispute is not at issue. As pointed out in the opinion below, what is at issue here is the petitioner's federal land patents and recorded copyrighted declaration of land patents shown in the exhibits annexed hereto as Appendix A. It is these documents that the California Supreme Court declined to address by its denial of the petitioner's application for hearing. The notion that a federal land patent constitutes a cloud on any titles in the State of California, or any state, is one that is only encouraged by California Chief Justice Rose Bird. As this Court soundly reasoned in *Summa,* the State of California must, *like other claims* be asserted in the patent proceedings or be barred. Id. 1758. Here, the State of California, by and through its judiciary, not only has assumed jurisdiction over federal land patents again, but has subsequently issued its order to have them delivered up to the state court for cancellation.

In reaching its results, the trial court failed to follow repeated decisions of this Court of which *Summa* is the

most recent. The acts of the state court constitutes a judicial taking of private property without just compensation. This is precisely the judicial acts anticipated in copyrighting the declaration of land patent to protect private property from being seized without due process of the law.

B. Proceedings Below, Parties, And Jurisdictional Matters.

This action was commenced in the Santa Clara County Superior Court on November 19, 1982 when the respondents Sui filed a complaint for Cancellation of Instruments, Slander of Title and Damages. Respondents filed a First Amended Complaint on October 4, 1983 adding Quiet Title and Conspiracy to cause emotional distress in the amount of $600,000 00. Named as defendants were all of the individuals and entities which had an interest of record in the parcels of land in dispute.

At the outset, the petitioners challenged the subject matter jurisdiction of the court below in a demurrer filed on December 28, 1982 that was subsequently denied and a restraining order issued against the petitioners. As stated in the appellate opinion the petitioners submitted over two hundred papers to that court in the form of writs that were denied in each instance. The petitioner's appeal was denied on an alleged procedural technicality and their petition for hearing in the California Supreme Court was denied, however, by an exception in the California rules of court, the petitioner's were granted permission to file the trial court exhibits with their petition and shown in Appendix A submitted with this writ.

C. Federal Questions Raised And Decided Below.

The decision of the California Appellate Court is based on the determination of a number of controlling questions of federal law in the trial court. First, whether the California courts are following the interpretation of this Court in *Summa.*

Second, both the trial court and the California Supreme Court rejected petitioner's contention that California cannot preempt federal law in respect to copyrights registered with the United States after the federal Copyright Act of 1976 is a federal question.

Petitioner's raised this preemption claim together with the fact that any and all civil actions involving federal copyrighted works must be brought in the federal district courts under the jurisdictional statute of section 1338(a) of Title 28 USC is a federal question.

Whether a state court has subject matter jurisdiction to cancel and annul a federal copyrighted work during the course of a civil state action is a federal question.

Third, petitioners asserted throughout the trial and appeal that there was no defense to respondent's claims in view of the fact that the respondent's entered the petitioners documents into evidence against them for cancellation by the state court.

———o———

REASONS FOR GRANTING THE WRIT

In light of this Court's decision in Summa, the acts of the state trial court in assuming jurisdiction over federal land patents and federal copyrights constitutes a taking of private property without just compensation.

1. California Rejects Summa.

This case turns on the effect of a federal patent issued under federal statute upon rights claimed to be derived from the United States. In such a case, petitioners believe it is beyond question that federal law is controlling. We further believe that the federal issues presented have already been resolved by this Court in *Summa* and by *Doolan v. Carr* (1887) 125 U.S. 618, 639. However, respondents argue that the state court taking subject matter jurisdiction over federal land patents and federal copyrights is not grounded in federal law, but merely announces state property law principles. Regardless of how it stands, the state court's interpretation of its exercise over federal land patents and federal copyrighted documents cannot stand because its decision to do so unconstitutionally appropriates private property rights. It ignores this Court's interpretation of the Act of 1851 and radically departs from rules long ago established by decisions of the California Supreme Court.

This case does not raise issues of first impression for the California Supreme Court. Starting even before this Court had considered the issues raised in *Summa,* the California Supreme Court recognized that patents issued pursuant to the 1851 Act by the Land Office conclusively established title of the grantee and that a patent, not void on its face, cannot be questioned, either collaterally or directly, by persons who do not show themselves in privity with a common or paramount source of title. *Doolan,* at 639; *Teschemacher v. Thompson* (1861) 18 Cal. 11, 25. Respondent's are illegal aliens who have not comé forward to show themselves in privity with the common or paramount source of title from the United States government. By persuading the trial court that the action below turns on a legal theory of dual chain of title, they still claim the trial court may assume jurisdiction to quiet title in the respondent's. The court's action flies in the face of the *Shoalwater Bay Indian Tribe* settlement act. It takes an act of Congress to quiet any title involving the incidence of federal land patents. It has been consistently held that claims not raised in the confirmation proceedings conducted pursuant to the 1851 Act were barred from future assertion. *Teschmacher,* 18 Cal. at 27-28, accord *Leese v. Clark,* 18 Cal. 535 (1861).

Cancelling and annulling the petitioner's federal land patents and declarations thereof is a judicial taking of private property without due process and violates the state constitutional right to protect property according to that right as it is preserved in Article I, Section 1 of the California Constitution.

The federal constitution prohibitions against taking property without due process of law and payment of just compensation cannot be so easily circumvented. In *Hughes v. Washington,* 389 U.S. 290 (1967) (Stewart, J. concurring) this Court recognized that judicial action which appropriates valuable property rights under the guise of holding that such rights never existed constitutes an unconstitutional taking.

> To the extent that the decision of the Supreme Court of Washington on that issue [ownership of accreted lands] arguably conforms to reasonable expectations, we must of course accept it as conclusive. But to the extent that it constitutes a sudden change in state law, unpredictable in terms of relevant precedents, no such deference would be appropriate. For a state cannot be permitted to defeat the constitutional prohibition against taking property without due process of law by the simple device of asserting retroactively that the property it has taken never existed. 389 U.S. at 296-297.

Knowing that federal land patent is the highest evidence of title, the respondents have never agreed that federal law controls the documents they placed in evidence against the petitioners at the demurrer hearing in 1982. At that time petitioner's cited *File v. Alaska* (1979), 593 P2d 268 in which the Supreme Court of the State of Washington explicitly held that when the federal government grants land via a patent, such patent is the highest evidence of title, therefore, that court held that federal law controls and the parties so agreed. Id. 270.

In sum, the attempt of the California court to rewrite 125 years of legal history is an unconstitutional taking of valuable property rights without due process or just com-

pensation. It is, as well, violative of the doctrine that rules of property law should be stable, predictable and not subject to radical change except for the most persuasive reasons. *Leo Sheep Co. v. United States,* 440 U.S. 668, 687 (1979). In *United States v. Title Insurance & Trust Co.,* 265 U.S. 472 (1924) this Court gave effect to this doctrine by declining the invitation of the Mission Indians to upset titles patented under the 1851 Act:

> *Where questions arise which affects titles to land it is of great importance to the public that when they are once decided they should no longer be considered open. Such decisions become rules of property, and many titles may be injuriously affected by their change.* Legislatures may alter or change their laws, without injury, as they affect the future only; but where courts vacillate and overrule their own decisions on the construction of statutes affecting title to real property, their decisions are retrospective, and may affect titles purchased on the faith of their stability. Doubtful questions on subjects of this nature, when once decided, should be considered no longer doubtful or subject to change. 265 U.S. at 486-487. (citations omitted, emphasis added).

The wisdom of this doctrine is apparent. Petitioners submit that in this case the Court should likewise decline to sanction the sudden and unforeseeable reversal of fundamental rules of property law long ago established by decisions of the California Supreme Court, and the most recent decision of this Court in *Summa.*

2. Declared Homestead Doctrine in California.

The copyright author of the document entitled "declaration of land patent" Gerald P. Hansen of Washington

State registered his copyright with the United States Copyright Office in 1981, No. TXU-81-430. In 1982, the California legislature repealed the statutory homestead sections 1237 through 1304 of the California Civil Code, effective July 1, 1983. In anticipation of the repeal, author Hansen designed and styled his declaration of land patent after the California declaration of homestead. Hansen's copyrighted form has since been acknowledged and recorded in all parts of the United States.

The California homestead law exists because the constitution of California says it must. It exists to protect the resident landowner the same as it exists in other states because all State constitutions provide for that protection in its Bill of Rights. Because the constitutional right to acquire, possess and protect property is an inalienable right, it is an automatic protection and generally codified in the civil codes within the states. Not so in California.

It is this copyrighted declaration of federal land patent that the dispute arose in the court below. The respondents are illegal aliens who have not met their burden of proof in accordance with the provisions of the 1851 Act, and in any event, would be time barred from collaterally attacking petitioners federal land patents. In light of the *Shoalwater Bay Indian Tribe* settlement act, the respondents have set up a quasi-dual chain of title theory by which they have persuaded the state trial court to cancel petitioner's land patents as false and fraudulent without any further proof than mere allegations.

It was not with mere speculation that author Hansen designed the copyrighted declaration. With the repeal of the codified homestead statutes, the present watered-down

version of the same statutes now in the Code of Civil Procedure, it is now discretionary with the trial court whether an existing declared homestead is valid. The declared homestead is recognized by the fedral bankruptcy courts, however, that exemption is not authorized in the State of California.

Prior to the repeal of the declared homestead civil statute, a judgment creditor had to apply to the appropriate court for an application to force the sale of a declared homestead property, and the monetary jurisdictional amount determinative of jurisdiction in California courts would invariably place the action for foreed sale in the superior courts on an order to show cause. Since the repeal, California title insurance companies have created a new and novel way of avoiding application to the courts for a forced sale on a declared homesteaded property by translating mortgage payments into "rent" payments. By a magical process known only to California, the alleged beneficial owner substitutes a trustee with the stroke of a pen and a *new* beneficial owner magically appears. The *new* beneficial owner now institutes unlawful detainer proceedings for "rent" payments in arrearage in the lower monetary jurisdictional court under $15,000.00 for "rent" arrearages under $1,000.00. At a court hearing under the repealed statute, the burden of proof would be on the creditor to convince the court that the homestead is invalid in order to get the property sold on that ground. Because there no longer exists a civil statute addressing the declared homestead, the judgment debtor has no means by which to prove his homestead as provided by the protection in Article I, section 1 of the California Constitution.

It is no longer speculation that California homeowners are losing their homes to illegal foreclosures under the

procedures described above because the California homeowners are kept in ignorance about this right by the courts and the more than 95,000 lawyers in California. A companion case to this petition is being prepared in which a declared homesteaded owner was ousted from his dwelling under California foreclosure without proper notice to appear in court and prove the validity of his declared homestead. While this petition does not address unlawful detainer, it is pertinent in that the case below arose under the copyrighted declaration and recorded federal land patent as the means of protecting property and property rights in California.

The petitioner's have received no communication from the author of the copyright nor any of his family that the copyrighted declaration of federal land patent has been challenged in any civil action in the federal courts of any nature whatsoever. Because the document is used nationwide, petitioner's have no reason to speculate that it is dormant.

3. Nature of the evidence.

The evidentiary documents were and are the petitioner's defense, however a legal impossibility is imposed when a defendant is required to repudiate original and authenticated documents, especially where a trial court judicially notices the presidential signatures, the seal of the United States and the date of the federal land patent. That is all that is required to establish the authentication of a federal land patent. *Young v. Howell* (1859) 14 Cal. 465, 467. On November 28, 1982, the trial court below took such judicial notice of the federal land patents

in evidence and proceeded to assume jurisdiction. Petitioner's continued to assert throughout the trial and appeal that federal land patent is not subject to collateral attack. *Doolan* at 639. Whether a factual determination made by the Land Office in the course of patent proceeding is open to collateral attack is a federal question.

As late as April, 1984, the California third district court of appeal reaffirmed the position that California state courts are duty bound to regard the views of the highest court in the land in *Filipino Accountants Assoc. v. State Board of Accountancy,* 154 CA3d 1098 at 1109 citing cases:

> "Where the Supreme Court of the United States interprets a statute enacted by Congress, that interpretation is binding upon the state courts of California."

At the same time that this reaffirmation was being espoused, this Court made its decision in *Summa* by interpreting the Act of 1851 and its two year statutes of limitation.

California courts recognize the doctrine of stare decisis and as late as March, 1984, the second district court of appeal reaffirmed the doctrine in *In re Hector,* 150 CA3d 1146 at 1154:

> "Under the doctrine of *stare decisis,* all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction. Otherwise, the doctrine of *stare decisis* makes no sense." (Emphasis by the court.)

The appellate courts in California appear to be at odds with each other in following start decisis law and

controlling federal decisions. This is currently the circumstances in regard to federal land patents being ordered up by the California courts to be cancelled and annulled in direct contravention of controlling federal statutory laws passed after the Act. When the highest court of California encourages circumvention of federal constitutional rights as well as state constitutional rights as a justification for the state courts to ignore this Court's most recent ruling in *Summa,* and now, the most recent act of Congress in the *Shoalwater Bay Indian Tribe* settlement act, it is clear that this Court is the last resort and only hope for landowners seeking to vindicate their rights under the Fifth and Fourteenth Amendments to the United States Constitution. This Court must exercise its plenary power to correct a situation growing worse for California landowners.

CONCLUSION

For the reasons stated above, we respectfully submit that this is a case of such importance as to warrant the granting of a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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Petitioner Pro Se

APPENDIX

[SEAL]

UNITED STATES DEPARTMENT OF INTERIOR

BUREAU OF LAND MANAGEMENT
CALIFORNIA STATE OFFICE
2800 Cottage Way
Sacramento, California 95825

January 15, 1985

I hereby certify that the annexed Pre-emption Certificate No. 540, dated May 1, 1867, is a true and literal exemplification of the record which is in my custody in this office.

In testimony whereof, I have hereunto subscribed my name and have caused the seal of this office to be affixed in the City of Sacramento, State of California, on the day and year above written.

/s/ Herman J. Lyttge
Chief, Records & Information Section.

A true and correct copy of patent No. 540 is on file with the Bureau of Land Management, U. S. Department of Interior.

[SEAL]

UNITED STATES DEPARTMENT OF INTERIOR

BUREAU OF LAND MANAGEMENT
CALIFORNIA STATE OFFICE
2800 Cottage Way
Sacramento, California 95825

January 15, 1985

I hereby certify that the annexed Pre-emption Certificate No. 2007, dated May 15, 1869, is a true and literal exemplification of the record which is in my custody in this office.

In testimony whereof, I have hereunto subscribed my name and have caused the seal of this office to be affixed in the City of Sacramento, State of California, on the day and year above written.

/s/ Herman J. Lyttge
Chief, Records & Information Section.

A true and correct copy of patent No. 2007 is on file with the Bureau of Land Management, U. S. Department of Interior.

[SEAL]

UNITED STATES DEPARTMENT OF INTERIOR

BUREAU OF LAND MANAGEMENT
CALIFORNIA STATE OFFICE
2800 Cottage Way
Sacramento, California 95825

January 15, 1985

I hereby certify that the annexed copy of Pre-emption Certificate No. 539, dated July 5, 1866, is a true and literal exemplification of the record which is in my custody in this Office.

In testimony whereof, I have hereunto subscribed my name and have caused the seal of this office to be affixed in the City of Sacramento, State of California, on the day and year above written.

/s/ Herman J. Lyttge
Chief, Records & Information Section.

A true and correct copy of patent No. 539 is on file with the Bureau of Land Management, U. S. Department of Interior.

[SEAL]

UNITED STATES DEPARTMENT OF INTERIOR

BUREAU OF LAND MANAGEMENT
CALIFORNIA STATE OFFICE
2800 Cottage Way
Sacramento, California 95825

January 15, 1985

I hereby certify that the annexed copy of Certificate Number 2006, dated May 15, 1869, is a true and literal exemplification of the record which is in my custody in this office.

In testimony whereof, I have hereunto subscribed my name and have caused the seal of this office to be affixed in the City of Sacramento, State of California, on the day and year above written.

/s/ Herman J. Lyttge
Chief, Records & Information Section.

A true and correct copy of patent No. 2006 is on file with the Bureau of Land Management, U. S. Department of Interior.

Recording Requested by
and when Recorded Mail to—

Name
Street Address
City & State

Space above this line for recorder's use.

DECLARATION
OF LAND PATENT
Patent or Grant No. —
Copyright 1981

———*———

KNOW ALL MEN BY THESE PRESENTS: That——
——— and ——————— do severally certify and declare as follows: that I/WE bring up this land patent in our name(s).

(1) THE CHARACTER OF SAID PROPERTY SO SOUGHT TO BE PATENTED, and legally described and referenced under Patent/Grant No. listed above is:———
——————————— and it is the only way a perfect title can be had in my/our name(s), Wilcox vs. Jackson, 13 Pet., (U.S.) 498, 10 L Ed 264; All questions of fact decided by the General Land Office are binding everywhere, and injunctions and mandamus proceedings will not lie against it; Litchfield vs. the Register, 9 Wall. (U. S.) 575, 19 L Ed 681.

(2) NOTICE AND EFFECT OF A LAND PATENT. A grant of land is a public law standing on the

statute books of the State, and is notice to every subsequent purchaser under any conflicting sale made afterward; Wineman vs. Gastrell, 54 FED, 819, 4 CCA 596, 2 US APP 581. A patent alone passes title to the Grantee; Wilcox vs. Jackson, 12 PET (U.S.) 498, 10 L Ed 264.

Where the United States has parted with title by a patent legally issued, and upon surveys legally made by itself and approved by the proper department, the title so granted cannot be impaired by any subsequent survey made by the government for its own purposes; Cage vs. Danks, 13 LA, ANN, 128.

(3) LAND TITLE AND TRANSFER. The existing system of land transfer is a long and tedious process involving the observance of many formalities and technicalities, *a failure to observe any one of which may defeat title,* even where these have been traced to its source, the purchaser must but at his peril, there always being, in spite of the utmost care and expenditure, the possibility that his title may turn out bad; Yeakle, Torrens System 209.

If this land patent is not challenged within sixty days (60), in a court of law by someone, or by the government, it then becomes my property, as no one has followed the proper steps to get legal title, the final certificate or receipt acknowledging the payment in full by a homesteader or preemptor is not in legal effect a conveyance of land, U.S. vs. Steenerson, 50 FED 504, 1 CCA 552, 4 U.S. APP 332.

TXU-81-430
Gerald P. Hansen (copyright 1981)

A land patent is conclusive evidence that the patent has complied with the act of Congress as concerns improvements on the land, etc.; Jankins vs. Gibson, 3 LA ANN 203.

STATE OF CALIFORNIA COUNTY OF————————
ON————————, 198—, before me, the undersigned, a Notary Public in and for said State, personally appeared ———— and ———— known to me to be the persons whose names are subscribed in the within instrument, and severally acknowledged to me that he/she/they executed the same.

Witness my hand and official seal.

Notary Public in and for said State.

STATE OF CALIFORNIA COUNTY OF————————
———————— deposes and says: That he/she/they is/are the declarant(s) in the foregoing declaration of Land Patent: that he/she/they has/have read and knows the contents thereof, and that the matters therein stated are true of my/our knowledge; and do state that the above court citings are true.

————, and ————.

Subscribed and affirmed to before me on this ——— day of ————————, 198—.

X————————
Notary Public in and for said State

TXU-81-430
Gerald P. Hansen (copyright 1981)